



***de maximis, inc.***

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September 15, 2015

Stephanie Vaughn  
17-mile LPRSA RI/FS Remedial Project Manager  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, NY 10007-1866

***Via Electronic Delivery***

**Re: Lower Passaic River Study Area (LPRSA) Draft Baseline Ecological Risk Assessment (BERA) – Cooperating Parties Group (CPG) Response to USEPA Region 2 (Region 2) Comments – May 2007 Administrative Agreement and Order on Consent for Remedial Investigation/Feasibility Study – CERCLA Docket No. 02-2007-2009 (AOC) - REVISED**

Dear Ms. Vaughn:

On behalf of the CPG, enclosed please find the CPG's Responses to Region 2's May 1, 2015 Comments on the draft 17-mile BERA (RTCs).

The CPG has been working diligently and in good faith toward completing the 17-mile BERA. The draft BERA was submitted to Region 2 on June 13, 2014 and fully complied with the Region 2-approved July 2009 Problem Formulation Document, CPG's October 29, 2013 Revised Risk Analysis and Risk Characterization (RARC) Plan, and the associated Region 2 RARC comments (dated January 31, 2014), as well as USEPA national guidance and policy. Therefore, the CPG was surprised and concerned to have received Region 2's numerous and extensive comments on the draft nearly 11 months later.

The CPG and Region 2 engaged in a series of conference calls on May 7, 14, 21, June 1, 24, July 6 and 29, 2015 in an attempt to clarify comments on the draft BERA and resolve the issues expeditiously and informally.

In a series of four letters between May and July 2015, the CPG advised the Region of its significant concerns regarding the Region's BERA comments, schedule requirements and delays in providing promised material:

1. May 15, 2015 Letter - The CPG documented its preliminary concerns regarding inconsistencies with previous project documents and other significant issues, such as the Region's failure to promptly deliver promised materials related to the Region's BERA comments.

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2. May 29, 2015 Letter - The CPG outlined a number of the Region's BERA comments related to data use that were inconsistent with the May 2014 Data Use and Data Evaluation Plan<sup>1</sup>.
3. June 12, 2015 Letter - This letter was prompted by the Region's continued delays in providing promised materials related to reference, background and the sediment quality triad that were preventing the CPG from providing a revised BERA on or about June 29, 2015, as directed by the Region in its May 1 comments which required a revised document within 60 days.
4. July 7, 2015 Letter - This letter sought consensus with the Region on a process and milestone schedule to revise both the risk assessments

Region 2 provided a response to the first three CPG letters and other communications by the CPG related to the LPRSA risk assessments by letter dated June 19, 2015. The Region also provided material on reference, background and SQT on June 19, 2015. This SQT and reference document was subsequently revised and provided by the Region to the CPG during the week of July 27. The Region's July 20, 2015 letter proposed schedule milestones consistent with those proposed with the CPG's June 12 and July 7, 2015 letters. The CPG is awaiting a response on the Region's action items identified during the July 29 conference call and documented in a July 30, 2015 email.

Pursuant to Region 2's letter dated July 20, 2015 and our recent discussions, the CPG understands Region 2 will conduct a quick review (within 30 days) of the RTCs. Upon notice from Region 2 that the RTCs form an acceptable basis, the CPG will submit a revised BERA within 45 days. Please let us know if Region 2 will not be able to conduct the review of the RTCs in that timeframe.

The CPG continues to reserve its right to take other steps, such as invoking dispute resolution under Section XV of the AOC to protect its interests, after Region 2 completes its review of the RTCs and advises the CPG of the results of that review.

The CPG requests that Region 2 include this letter into the Administrative Record for the 17-mile LPRSA operable unit of the Diamond Alkali Superfund Site.

Please contact Bill Potter or me with any questions or comments.

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<sup>1</sup> The Data Usability and Data Evaluation Plan was submitted to Region 2 on February 26, 2010, a revised draft was submitted on April 13, 2012, and a final revised draft on May 15, 2014. Region 2 commented on the 2010 and 2012 drafts; comments were received on April 1, 2010 and April 10, 2014, respectively. Region 2 provided final approval of the plan on July 20, 2015.

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Very truly yours,

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Robert H. Law, PhD  
CPG Project Coordinator

**cc:** Ray Basso, EPA Region 2  
Walter Mugdan, EPA Region 2  
Sarah Flanagan, EPA Region 2  
CPG Members  
William Hyatt, CPG Coordinating Counsel  
Willard Potter, CPG Project Coordinator